ELOPEMENT, FAMILY AND THE COURTS: THE CRIME OF RAPT IN EARLY MODERN FRANCE

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During the Ancien Regime, the men who sat on the benches of the Paris Parlement possessed considerable powers in shaping the form of French law. The judges took advantage of the tradition that the French sovereign submit each proposed statute to the Parlement for verification. Once presented before the Grand'Chambre, the magistrates could add amendments, modifications, and even strongly oppose royal edicts. In addition to this advisory role, they enjoyed wide discretionary authority in applying the law to specific cases. This situation gave them the opportunity to incorporate their own opinions and values directly into the laws. Their treatment of the crime of rapt offers a good example.

In the mid-sixteenth century, cases of rapt presented problems of legal definition and jurisdiction between competing ecclesiastical and secular authorities. Basically, the Church and the French monarchy held differing views on what constituted a valid marriage. The rules of the Church, established at the Council of Trent, set only a minimal number of requirements.[1] As long as banns were properly published and the ceremony was performed before two witnesses, the marriage was seen as binding in the eyes of God. No marriage was lawful, however, if there was evidence of what the Church called impediments. Rapt was considered such an impediment which the Council defined as the violent and forced abduction of a woman from her established place of residence for the purpose of

marriage. Despite the demands of the king and the French delegates for stiffer requirements, the Council of Trent still upheld the validity of clandestine marriages because they did not violate the rules concerning free choice. It also took no official stand on the question of parental consent.

Even before the Council of Trent completed its work of reform, Henry II issued his own law in 1556 against clandestine marriages. The new statute contained two far-reaching provisions that superseded the regulations of the Church. First, it decreed that persons who married without parental consent were to be disinherited and deprived of all forms of family assistance.[2] Secondly, it classified males thirty years and under and females twenty-five years and under as minors needing the consent of their parents for marriage. The Ordonnance of Blois, published in 1578, widened the gap between the Church and state even further. Article 40 added more stringent prescriptions. The rule on the publication of banns was stricter, four witnesses--not just two--had to be present at the wedding, and the officiating priest had to know the ages of the couple and have proof of parental consent.[3] Those who wed without the approval of their parents were to be punished as malefactors guilty of the crime of rapt. Article 42 of the same ordinance established rapt as a capital offense and included penalties for those who assisted in the crime.

The wording of these articles laid the legal foundation for expanding the limits of the crime of rapt. Unlike the Church which had defined rapt only in terms of a man employing violence to abduct

a woman, the ordinance provided equal punishment for men and women who had suborned a minor into a marriage against the will of the parents. Thus, French jurists could categorize all clandestine marriages as rapt de séduction, which carried the same pains and penalties as rapt de violence.[4] The magistrates applied this new definition of rapt with uncommon flexibility, even in cases beyond the bounds of marriage. For example, Paul Hurault, the Archbishop of Aix, was accused of rapt as a result of seducing a fourteen year-old girl he was allegedly attempting to convert from Protestantism, while he neither carried her off with force nor did he as a clergyman elope and marry her.[5]

Further refinements in the law occurred in the seventeenth century. The Code Michau of 1629 stipulated that priests could only perform the marriages of their own parishioners who had supplied adequate proof of their parents' approval.[6] The Declaration of 1639 brought together into one document all previous enactments on rapt and clandestine marriage, while adding some new features.[7] Section two, for instance, stated that even men and women of majority age needed the consent of their parents to marry or else suffer the penalty of being disinherited. In effect, this provision precluded any free choice in first marriages as long as the parents remained alive.

In addition to differences of definition, there was also the question of jurisdiction. Prior to the issuance of the 1556 edict, the monarchy had generally adhered to the tenets of Canon Law and permitted disputes concerning marriages to be resolved in ecclesi-

astical courts. However, this policy changed once the state created it own laws on marriage. The magistrates, with the support of the monarchy, insisted that cases of rapt fell within the jurisdiction of the royal courts. According to their arguments, marriage was also a civil act because it involved a non-religious contract, specifically the transfer of wealth, which gave the judges the right to determine its legality.[8] Furthermore, rapt was a capital offense in French law. Since ecclesiastical courts could not impose the death penalty, French magistrates concluded that cases of rapt were beyond their legal competency.[9]

The judges did not wait for these arguments to convince Churchmen, instead they simply assumed jurisdictional supremacy. Through the use of the legal procedure known as comme d'abus, the Paris Parlement recognized appeals of decisions made in ecclesiastical courts by questioning their handling of the case or by declaring that the clerical judges' verdict contradicted an existing French law. In the end, the French clergy gave implied recognition to the superiority of the royal courts. This concession resulted from the marriage of Gaston d'Orléans, the brother of Louis XIII, to the daughter of the Duke of Lorraine.[11] By the arrêt of 5 September 1634, the Paris Parlement annulled the marriage primarily because Gaston had not obtained his brother's approval. Undaunted, Gaston challenged the judicial competency of the Parlement of Paris. Louis XIII consulted with the Assembly of the Clergy for their opinion and they gave him a response which reaffirmed the legitimacy of the Parlement's action and decision.

Despite the increasing severity of the laws, the crime of rapt continued to occur frequently. The police records of the Préfecture of Paris show there were a steady number of individuals imprisoned and awaiting trial for rapt. Likewise, the criminal registers of the Parlement of Paris indicate that the magistrates handled a sizable number of cases on appeal from lower courts. Finally, the preambles of the many laws concerning this crime contained the complaint that instances of elopements and clandestine marriages were widespread.

Royal initiative in responding to this social problem was sporadic at best. Kings tended to react only after a clandestine marriage had occurred involving persons of special interest to themselves.[12] Any change that was made in the law came about primarily through the persistent efforts of the noblesse de robe. Utilizing their positions on the royal courts, the magistrates attempted to lessen the number of elopements and secret marriages by means of strengthening the legal powers of the father over his children. That the judges had recourse to such a policy was hardly surprising as their background and social environment made them sympathetic to, if not convinced of, the need to enhance paternal authority in France. Holding important political and judicial offices gave the noblesse de robe sufficient influence within the royal administration to turn their personal convictions on marriage into offical government policy.

Several factors influenced the opinions of the magistrates. In social and religious matters, the noblesse de robe clung to traditional values. Many of these families had recent origins in the bourgeoisie and had risen into the ranks of nobility through wealth and

advantageous marital alliances. For them, marriage was too important an issue to be left to the emotional whims of impressionable young men and women: the chances for upward social and political mobility and the reputation of the family name could be seriously compromised by a mésalliance. In addition, the Gallican sympathies of the magistrates were notorious. It was natural for them to support the right of the monarchy to create its own laws on marriage and to insist on the jurisdictional supremacy of royal courts over ecclesiastical courts.

There were also legal precedents that supported their views on marriage, particularly in Roman Law where the father was endowed with near-absolute powers over his family (paterfamilias). Roman Law had a pervasive influence since its principles were deeply rooted in the customary law of France and also because it was studied in the law schools as part of the legal training for lawyers. The magistrates often referred to the laws of Rome in their writings on the topic of marriage. In short, the noblesse de robe not only showed respect for Roman Law, but they also identified with it because they found legal justifications which coincided with their own opinions on marriage.

French parlementaires copied the form and spirit of Roman Law by acting to improve the legal position of the father at the expense of women and minors.[13] The registres of the Paris Parlement clearly reveal that it was the magistrates who were responsible for adding important provisions to the 1556 edict on clandestine marriages. When Henry II sent the proposal to the Grand'Chambre for verification,

the judges included the stipulation that only the consent of the father (or of the mother if the father was deceased) was needed to arrange a marriage.[14] Second and more noteworthy, it was at the insistence of the judicial officers that the high age requirements for majority status was inserted into the edict.

The Declaration of 1639, the most comprehensive law on marriage to date, was drafted by Jérôme Bignon, the avocat général of the Paris Parlement and a member of the noblesse de robe. His views on the need for a strong authoritarian figure in the family had already been expressed as early as 1633 when Pierre Séguier, the soon-to-be Chancellor of France, requested that the avocat général draft and endorse a proposal to curb the alarming number of rapts.[15] Bignon received the opportunity to transform his opinions into legal reality in 1639, and he constructed a law that suited the sensibilities of the magisterial class. In the preamble, he spoke of the frequent transgressions of God's commandment that children obey and revere their parents and of the blemished honor and social ruin of families that resulted from illegitimate and damaging marriages.[16] For its part, the Parlement of Paris enthusiastically approved the declaration without adding any amendments or modifications.[17]

While royal justice was far from uniform for all social classes, my own sampling of over fifty cases of rapt between 1560 and 1650 involving individuals from the noblesse de robe demonstrates the paternalistic bias of the magistrates. The case of the Brochard family was typical.[18] César Brochard, already an avocat of the Parlement, had eloped and married Susanne Guy, a native of Maine

without social distinction. César's father, Jean, a conseiller du roi en ses conseils d'état et privé, brought suit against his son, who was still legally a minor, in order to have the marriage invalidated. The judges on the criminal court of the Paris Parlement upheld a lower court's decision that César was guilty of marrying against the will of his parents and that the marriage was therefore null and void. Susanne Guy was declared guilty of rapt for marrying César. She was sentenced to renounce her pretended marriage in the presence of his parents and four witnesses and to beg pardon from the king for her crime. Also, she was banished from the ville, prévôté, and vicomté of Paris for a period of nine years. César's punishment was less severe but more humiliating. The Parlement ordered him to kneel before his parents and four witnesses and ask for forgiveness for the harm he had caused them and to admit to the impropriety of his behavior. In addition, it commanded him to retire to the Abbey of St. Victor or to another monastery and remain there until his parents allowed him to return to society.

In another case, Jacques Gaudart, a maître des requêtes, was named in a lawsuit as the defendant in a case involving the marriage of his daughter, Louise. In 1636, Marc de Brion and Louise, both about eighteen years of age, had married with the consent of the Gaudart family after a marriage contract had been signed. Charles de Brion, seigneur de Hautefontaine and the father of Marc, initiated legal action against the bride's father for damages and demanded the nullification of the marriage on the grounds of its secret nature and the lack of parental consent. According to the complainant's

petition, Marc, a student at the College of Navarre, had become so infatuated with Louise Gaudart that he no longer wanted to return to college and pursue his studies. The Gaudart family had contributed to the physical and mental seduction of a minor by condoning the marriage. The Parlement held that indeed rapt had been committed. Marc was found guilty of acting against the express wishes of his parents and fined 24,000 livres which were to be given to pay for the bread of prisoners. The magistrates ordered him to enter the monastery of St. Victor and to remain there until such time his parents decided he had regained his senses. The two families settled on a financial indemnity out of court: the bride's father agreed to pay Charles de Brion 46,000 livres for damages.

The ignominy associated with the crime of rapt touched a number of other parlementaire families. Henri de Bullion, the brother of Claude, surintendant des finances and garde des sceaux under Louis XIII, was also convicted of rapt.[20] Like many before and after him, he had eloped and married without parental approval. The family of the would-be-bride, Marguérite Durand, sued for nullification and damages to compensate for the loss of honor their daughter had suffered as a result of the illegal marriage. Again, the Parlement of Paris supported the position of the complainants. As part of his punishment, Henri de Bullion was sentenced to contribute 1,600 livres to the dowry of Marguérite in order to assist her parents in arranging a proper and suitable marriage. Bullion was to remain in prison until the sum was paid to the Durand family.

Decisions like these raised the question of where the right of

the father ended and that of his children began. The problem was forced upon members of the Law Faculty at the Sorbonne particularly by the case of the daughter of the Duke d'Attichy, which was deliberated in 1647.[21] Though residing in her father's household, she was over the age of twenty-five and wanted to lead an independent life. After spending several unhappy years in a convent, she had no inclination to reenter the cloister either as a lay resident or as a nun. Her father had offered a handsome dowry for her to marry, but she shunned that prospect. The issue was whether this woman could act freely beyond the control of her father. After due deliberations, the legal scholars concluded that the daughter was obligated by natural, divine, and human laws to conform to the will of her father as long as she remained in his household. They did, however, confirm the principle preventing a person from being forced to marry or become a religious against his or her will.

One of the participating legal scholars, Florent, supplied more detailed reasons behind the joint opinion.[22] Since paternal authority, according to the author, came from a direct command of God, no reason or pretext could excuse a daughter from rendering obedience to her father. Thus as a dependent in his household, the daughter had to accept the advice of her father, whose experience and sound judgment should prove beneficial to her future plans. In essence, the referees in this domestic dispute protected children from extreme measures but nevertheless locked them into an inextricable position. On one hand, as long as children resided with their father they fell under his control, regardless of major or minor status. On the

other hand, minors, especially those from the noblesse de robe, could hardly leave the household without incurring financial and social ostracism because society itself was paternalistic: the acquisition of offices and the arrangement of marriages depended upon wealth, which was entrusted and managed by the father.

Sufficient evidence exists to argue that the noblesse de robe was an important force behind the gradual movement towards increased paternal authority. By employing their political leverage, the magistrates were able to fortify the legal standing of the father through their power of suggesting amendments to laws sent to the Parlement for verification. It should be noted that over the one-hundred year period from 1550 to 1650, the judges added only stiffer provisions which strengthened paternal rights and consistently approved, without reservation, each escalation in the severity of the laws on marriage.

Through their judicial function, the magistrates managed to move cases concerning marriages out of the ecclesiastical courts (where Church Law was less sympathetic to the importance of paternal authority) and into their own jurisdiction. To accomplish this, legal definitions were changed to favor the Gallican argument that the French sovereign had the power to create his own laws on marriage and that the parlements possessed the right to enforce them through the king's judicial system. Once the Paris Parlement became the court of last appeal involving instances of rapt, the magistrates were in a position to hand down judgments and sentences which expressed their own personal viewpoints as to the nature and

seriousness of the crime. Although the death penalty was rarely invoked, the judges were quick to nullify secret marriages, impose banishment, and levy heavy fines--in addition to the customary act of making the prodigal sons and daughters abase themselves before their parents. The Parlement invariably assumed that the parents were the injured party, leaving little doubt as to the court's determination to enhance the authority of the father.

The motives appear evident. The noblesse de robe depended upon beneficial marital alliances for prestige, status, and influence, features which were directly related to power. Yet without a policy of judicial activism, the magistrates would have had few controls over a matter they endowed with great importance. The success of the noblesse de robe in incorporating their attitudes towards rapt into French law left a distinct imprint on French society, while at the same time protecting their own self-interest concerning marriage.

FOOTNOTES

[1]Information on the work of the Council of Trent has been summarized from the following source: Adhémar Esmien, Etude sur l'histoire du droit canonique privé, Le mariage en droit canonique. (Paris: L. Larose et Forcel, 1891), II, 157-329.

[2]Archives Nationales (hereafter AN), AD II 20, Edit du roi Henry II touchant les mariages clandestins, fév. 1556 (n.p., n.d.), pp. 2-3. For a copy of this law with a commentary, see: Edict du roy Henry II sur les mariages clandestins contractez par les enfans de famille, sans le vouloir et consentement de leur père et mère. Commenté en déclaration panégyrique par M. Guillaume Mellier (Lyon: J. Temporal, 1558).

[3]François A. Isambert, et al., eds., Recueil général des anciennes lois françaises (Paris: Belin-Leprieur, 1821-33), XIV, 391-92.

[4]The development of rapt de séduction has received considerable attention by legal historians. The following works cover the topic more than adequately: Bibliothèque Nationale (hereafter BN), MS, Collection Dupuy, CMXXIX, "Traité du mariage chrestien selon les loix de France," 51-72; MS, Collection Morel de Thoisy, CDXIX, "Dissertation et extrait sur le rapt et la séduction," fols. 334-61; L. Duguit, "Etude historique sur le rapt de séduction," Nouvelle Revue historique de droit français et étranger, X (1886), 586ff; M. Mitterer, "Der 'rapt de séduction' als Ehehindernis nach gallikanischem Kirchenrecht," Zeitschrift der Savignystiftung fuer Rechtsgeschichte, Kanonist. Abteilung, XII (1922), 55-109; G. Pacilly, "Contribution à l'histoire de la théorie du rapt de séduction," Revue d'histoire du droit, XIII (1934), 306-19.

[5]"Requête au parlement, pour rapt et séduction, contre l'Archevêque d'Aix," Revue rétrospective ou Bibliothèque historique, contenant des mémoires et documents authentiques, inédits et originaux... (Paris), II (1834), 279-89.

[6]Isambert, Recueil général des lois, XVI, arts. 39-40 and 169, pp. 234-35, 273-74.

[7]AN, AD II 20, Déclaration du roy, portant règlement sur l'ordre qui doit estre observé en la célébration des mariages, et contre ceux qui commettent le crime de rapt, 26 nov. 1639 (Paris: Chez Henry Charpentier, s.d.), p. 3.

[8]Roland Mousnier, La Famille, l'enfant et l'éducation en France et en Grande-Bretagne du XVI^e au XVIII^e siècle (Paris: Centre de documentation universitaire, n.d.), pp. 115-17.

[9]BN, MS, Collection Dupuy, CMXXIX, "Traité du mariage chrestien...," 54-55.

[10]Pacilly, "Contribution à l'histoire de la théorie du rapt de séduction," pp. 307-09; François Lebrun, La Vie conjugale sous l'Ancien Régime (Paris: Armand Colin, 1975), p. 13.

[11]J. Gaudemet, "Législation canonique et attitudes séculières à l'égard du lien matrimonial au XVII[e] siècle," Dix-septième siècle, CII-CIII (1974), 22.

[12]The 1556 law against clandestine marriages was prompted by the refusal of the Pope to release the son of the connétable de Montmorency from his promise of marriage in order to allow him to wed Diane de Farnas, the illegitimate daughter of the king, Henry II. Louis XIII was spurred to issue the 1639 declaration to prevent his favorite, Cinq Mars, from marrying the courtesan Marion de Lorme.

[13]The Code Michau and the Declaration of 1639 expanded the definition of a minor to include widows twenty-five years and under. See AN, AD II 10, Arrest de la cour de Parlement qui juge qu'une veuve mineure ne peut pas se marier sans le consentement de son père, 13 mars 1663.

[14]AN, X^{1a}.1584, MS, "Registre du Parlement de Paris (4-5 fév. 1556)," fols. 70v-71v.

[15]BN, MS, Collection Morel de Thoisy, CDXVIII, "Lettre de M. Séguier...à M. Bignon, avocat général...pour l'exciter à travailler à une ordonnance sur les mariages clandestins...avec la réponse (17 sept. 1633)," fols. 242-54; "Pensées de M. Bignon sur le mariage," ibid., fols. 255-64.

[16]AN, AD II 20, Déclaration du roy...26 nov. 1639, pp. 1-2.

[17]AN, X^{1a}.8387, MS, "Registre du Conseil secret du Parlement de Paris (16 déc. 1639)," [fols. unnumbered in this volume].

[18]AN, X^{2b}.313, MS, "Registre criminel du Parlement de Paris (29 juillet 1619)," carton. The same case was also reported in: BN, MS, Collection Cinq Cent de Colbert, VI, fols. 452-53.

[19]BN, MS, Collection Morel de Thoisy, CLXXXIX, "Arrêt du Parlement, du 4 septembre 1637," fols. 234-49; MS, Collection Cinq Cent de Colbert, VI, fols. 470-86.

[20]AN, X^{2b}.229, MS, "Registre criminel du Parlement de Paris (24 et 27 janv. 1606)," carton.

[21]BN, MS, Collection Dupuy, DCLI, "Consultation sur le point de savoir si une fille, quoique majeure de 25 ans, est obligée de se soumettre aux conseils et à la volonté de son père (Paris, 19 et 22 août 1647, par J. Percyret, N. Cornet, J. Coqueret, R. Duval, M. Grandin et par Florent)," fols. 173-74.

[22]Ibid., fols. 175-79.